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Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[07 August 2018]

* Issued as received, in the language(s) of submission only.

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Report of the Special Rapporteur on the rights of indigenous peoples

Ms. Vicki Tauli-Corpuz, the Special Rapporteur on the Rights of Indigenous Peoples (the Special Rapporteur), visited Australia between 20 March to 3 April 2017 to examine the human rights situation of Aboriginal and Torres Strait Islander Peoples.

Following the visit, the Special Rapporteur prepared a comprehensive report1. She concluded that "While the [Australian] Government has adopted numerous policies to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islanders, those policies do not duly respect the rights to self-determination and to full and effective participation."

She made forty-eight recommendations dealing with a range of issues, including:

- The institutional and legal framework;
- Self-determination and participation;
- Health services;
- Education;
- Employment;
- Housing;
- Incarceration and administration of justice;
- Child protection;
- Violence against women;
- Political participation; and
- Land rights and native title.

FAIRA is unaware of any official response by Australia to the conclusions and recommendations of the Special Rapporteur. By our calculations, Australia has taken no action in response a majority of her recommendations. Australia should establish a mechanism for assessing reports from all Special Rapporteurs and United Nations treaty bodies and responding to their recommendations on a publicly available website.

As limited space does not allow a detailed assessment of all of her findings and recommend... , FAIRA will concentrate on just a few of them.

Recognition of Aboriginal and Torres Strait Islander Peoples

FAIRA laments that the Australia appears unable to break free from the stranglehold of its colonial legacy and accord Indigenous peoples the recognition and respect due to its First Peoples. Many well-meaning Australians regard the situation of First Peoples as a moral issue; very few see it as a rights issue as well. Many of those who acknowledge that our land was stolen and that no attempts were made officially to treat with First Peoples, do not necessarily see our intrinsic worth as indigenous peoples with distinctive cultures, languages and beliefs; distinctive social, economic and political systems; strong links to our lands and waters and surrounding resources: and unique understanding and knowledge of our environments.

The Special Rapporteur observed that "... to truly recognize the situation of Aboriginal and Torres Strait Islanders today, there needs to be much greater public awareness of their perspectives on history and the consequences of past policies and legislation, including the long-term damage and rupture of social bonds caused by the forced removal and institutionalization of their children."

If there was a more complete understanding and recognition of First Peoples' inherent rights and valued place in the life of the nation, First Peoples would not need to campaign, seemingly in vain: for our sovereignty to be recognition in the constitution; to remain on our lands with appropriate services provided; for our right to participate equally in the political and civil processes and the economic success of the nation; for all Australian schools to teach the true history of colonisation, the destruction of many of our cultures and languages; and the theft of much our lands and resources.

1. A/HRC/36/46/Add.2

Our calls for self-determination and freedom from discrimination continue to fall on deaf ears. Or they are paid lip service to and nothing results. The various reports recommending substantive reform to the Australian Constitution in recognition of First Peoples continue to pile us on bookshelves or placed in the "too hard" basket, and yet another committee is established to consider the issue and make further recommendations.

Australia does have laws prohibiting racial discrimination, but the Australian Parliament can set aside the laws and pass discriminatory legislation (and has done so). The national laws do not criminalise hate speech or racial vilification; in fact, 2 attempts have been made since 2014 to water-down the *Racial Discrimination Act* by removing the provisions making it an offence to "offend, insult and humiliate" on the basis of race. Both attempts were defeated by the Senate, but the fact remains that one major Australian political party (the Coalition) supports weakening of existing protections.

A constitutional prohibition of racial discrimination is the only way to guarantee that future Parliaments are unable to take action which discriminates against First Peoples.

The Declaration on the Rights of Indigenous People

The Government of Australia asserts that its laws, policies and programmes are consistent with and, give effect to, the aims of the Declaration on the Rights of Indigenous Peoples (the Declaration). Yet, the Special Rapporteur concluded that, "... policies do not duly respect the rights to self-determination and to full and effective participation.".

The Special Rapporteur recommended that Australia include the Declaration in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011.

Australia has publicly committed to the Declaration, and, in doing so, accepts the right of the Aboriginal and Torres Strait Islander peoples to self-determination as Peoples. It should therefore be prepared to support legislation in the Parliament that accords with its publicly stated position.

The Special Rapporteur was critical of Australia's failure to develop a national strategy to implement the Declaration. In spite of this, no action has been taken to develop and implement, in cooperation with indigenous peoples, a national plan or strategy to achieve the ends of the Declaration as recommended.

Australia must commit to developing a national strategy in partnership with the representatives of First peoples.

National Congress of Australia's First Peoples

Since 2014, Australia has refused to resource the only existing national, representative body for Aboriginal and Torres Strait Islander peoples – the National Congress of Australia's First Peoples.

The Special Rapporteur recalled "... that the Government accepted, in the context of the universal periodic review in 2015 to "continue to support indigenous institutions that bring cohesion to communities, such as the National Congress..." noting that "... financial and political support for the Congress to operate effectively is crucial to prove the commitment of the Government to advancing indigenous rights." The Special Rapporteur expressed her concern that funding remains insufficient for the Congress to exercise its mandate fully.

The Special Rapporteur noted that "[t]he establishment of the Congress in 2010 followed extensive consultations among indigenous peoples and is in accordance with article 18 of the Declaration, which states that indigenous peoples have the right "to participate in decision-making in matters which affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions". The Declaration also affirms in its article 39 that indigenous peoples have the right "to have access to financial ... assistance from States ... for the enjoyment of the rights contained in this Declaration"."

FAIRA supports the Special Rapporteur's recommendation that the government reinstate funding to the National Congress to enable it to fulfil its mandate to advocate for and promote and protect the rights of Australia's First Peoples.

Indigenous Advancement Strategy

The Special Rapporteur observed that the Indigenous Advancement Strategy (IAS), implemented by the Australian Government in 2014, has undermined the sustainability of many Indigenous organisations and communities and that many IAS programmes was transferred to non-Indigenous organisations.

She further observed that, "the strategy has had a devastating impact on Indigenous organisations" (noting that) "it has run contrary to the publicly expressed commitments of the Government to doing things with rather than to Aboriginal and Torres Strait Islander people.

FAIRA supports the Special Rapporteur's recommendation that the IAS be revised in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, National Congress, the Indigenous Advisory Council and relevant peak Indigenous organisations.

Incarceration and the administration of justice

The Special Rapporteur noted that "The extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islander people, including women and children, is a major human rights concern. While Aboriginal and Torres Strait Islanders make up only 3 per cent of the total population, they constitute 27 per cent of the national prison population. More than half of the children in detention are Aboriginal and Torres Strait Islanders." She went on to observe that "The proportion of Aboriginal and Torres Strait Islanders continues to rise and is expected to reach 50 per cent of the overall prison population by 2020."

The Special Rapporteur made 13 recommendations, almost all of which appear to have been ignored. In Australia, the criminal justice system is administered by the state and territory governments. Australia uses this fact to explain its inability to ensure that criminal laws are respectful of human rights. This is a cop out. Much more can be done through the Council of Australian Governments process to assess the laws which impact adversely First Peoples predominately and remove them from the statute books. Much more can and must be done to provide more culturally sensitive services, including by First Peoples organisations, to alleviate the poverty and disadvantage suffered by our peoples.

FAIRA thanks the Special Rapporteur for her visit, congratulates her on her incisive observations and conclusions, and commends her report to the Australian Government and all other levels of government in Australia.